

No. 1593

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

EMIL BIRCHER,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

TRANSCRIPT OF RECORD.

Upon Writ of Error to the United States District
Court for the District of Montana.

FILED

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Names and Addresses of Attorneys of Record.

CARL RASCH, Esq., United States Attorney,
Helena, Montana,
Attorney for Plaintiff and Defendant in Er-
ror.

GEO. W. MYERS, Esq., Miles City, Montana,
and

Messrs. WALSH & NOLAN, Helena, Montana,
Attorneys for Defendant and Plaintiff in Er-
ror.

*In the District Court of the United States, in and for
the District of Montana.*

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

EMIL BIRCHER,
Defendant.

Caption.

Be it remembered, that on the 20th day of Decem-
ber, A. D. 1907, an indictment was presented and
filed herein, being in the words and figures following,
to wit:

Indictment.

United States of America,
District of Montana,—ss.

*In the District Court of the United States for the
District of Montana.*

Of the Term of November, in the Year of our Lord
One Thousand Nine Hundred and Seven.

The Grand Jurors of the United States of America, duly impaneled, sworn and charged to inquire within and for the District of Montana, and true presentments make of all crimes and misdemeanors committed against the laws of the United States within the State and District of Montana, upon their oaths and affirmations do find, charge and present:

That the United States of America was, on the 17th day of November, A. D. 1907, and at all the times herein mentioned, the owner of that certain tract of public lands, situate, lying and being in the County of Custer, in the State and District of Montana, described as follows, to wit: Sections fourteen (14) and twenty-two (22), all of Section twenty-six (26) (except the northwest quarter of the northwest quarter, and part of the southeast quarter of the southeast quarter, and part of the east half of the northeast quarter), the principal part of the southeast quarter of section twenty (20), and part of the southeast quarter of the northeast quarter of section twenty (20), all in township seven (7) north, of range forty-nine (49), east of the Principal Meridian

imately nineteen hundred and twenty acres of land in the County of Custer, in the State and District of Montana, a more particular description of which said lands is to the Grand Jurors aforesaid unknown; and while the said United States was so the owner of all the lands aforesaid, one Emil Bircher, late of the State and District of Montana, on, to wit, the 17th day of November, A. D. 1907, in the County of Custer, in the State and District of Montana, did, wrongfully and unlawfully, maintain and control, and cause to be maintained and controlled by him, the said Emil Bircher, an inclosure of the said lands consisting of a fence of posts and wires, which said fence, then and there, inclosed all of the said tract of land comprising an area of approximately nineteen hundred and twenty acres of land, said lands so inclosed as aforesaid being public lands of the United States, and he, the said Emil Bircher, at the time of so maintaining and controlling said fence and inclosure as aforesaid, has no claim or color of title made or acquired in good faith, or an asserted right to said lands by or under claim made in good faith with a view to entry thereof at the proper land office under the general laws of the United States to said lands, or any part or parcel thereof; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

CARL RASCH,

United States Attorney.

[Endorsed]: No. 1253. United States District Court, District of Montana. The United States of

America, Plaintiff, vs. Emil Bircher, Defendant. Indictment—a True Bill. H. G. Pickett, Foreman of Grand Jury. Carl Rasch, U. S. Atty., Dist. of Mont.

Witnesses: A. H. FESSLER.

ALBERT PRELLER.

E. S. FOLEY.

Presented to the Grand Jury in open court, by their Foreman, and in their presence, and filed this 20th day of December, A. D. 1907. Geo. W. Sproule, Clerk U. S. Dist. Court, Dist. of Montana. By C. R. Garlow, Deputy. Bond fixed at \$500. W. H. Hunt, Judge.

Bench Warrant.

UNITED STATES OF AMERICA.

U. S. of America,
District of Montana,—ss.

To the Marshal of the United States, for the District of Montana, and his deputies, or any or either of them, Greeting:

Whereas, at a District Court of the United States of America, for the District of Montana, begun and held at the city of Helena, within and for the District aforesaid, on the 20th day of December, in the year of our Lord one thousand nine hundred and seven, the Grand Jurors in and for the said District, brought into the said court a true Bill of Indictment against Emil Bircher, for unlawfully fencing U. S. lands, as by the said Indictment now remaining on file and of record in said court will more fully appear;

to which indictment the said Emil Bircher has not yet appeared or pleaded:

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Emil Bircher, and bring him before the said Court, at the United States District Courtroom, in the Federal Building, at Helena, Montana, to answer the Indictment aforesaid.

Witness the Honorable WILLIAM H. HUNT, Judge of said Court, and the seal thereof at Helena, in said District, on the 20th day of December, A. D. 1907.

[Seal of Court]

GEO. W. SPROULE,

Clerk.

By C. R. Garlow,

Deputy Clerk.

MARSHAL'S OFFICE.

United States of America,
District of Montana,—ss.

In obedience to the Warrant, I have arrested the said Emil Bircher, on the 21st day of January, 1908, sixteen miles northeast of Miles City, in Custer County, State of Montana, and on the same day conducted him before the Honorable Frederick M. Kreidler, the nearest U. S. Commissioner in and for the District of Montana, who admitted him to bail in

the sum of Five Hundred Dollars, whereupon I released him.

Dated this 22d day of January, A. D. 1908.

ARTHUR W. MERRIFIELD,

U. S. Marshal.

By J. W. Haigler,

Deputy U. S. Marshal.

[Endorsed]: Title of Court and Cause. Bench Warrant. Carl Rasch, U. S. Attorney. Bail Filed at \$500.00. Filed Jan. 27, 1908. Geo. W. Sproule, Clerk.

In the District Court of the United States, District of Montana.

No. 1253.

THE UNITED STATES OF AMERICA.

vs.

EMIL BIRCHER,

Arraignment and Plea.

Defendant, with his counsel, Geo. W. Meyers, in court and being arraigned, he answered that his true name is Emil Bircher, and thereupon defendant waived the reading of the indictment and time to plead, and thereupon defendant pleaded that he is not guilty and plea of not guilty entered.

Entered, in open court, January 25th, A. D. 1908.

GEO. W. SPROULE,

Clerk.

Attest a true copy of minute entry.

[Seal]

GEO. W. SPROULE,

Clerk.

By C. R. Garlow,

*In the District Court of the United States, District
of Montana.*

THE UNITED STATES OF AMERICA,
Plaintiff,

versus

EMIL BIRCHER,
Defendant,

Verdict.

We, the jury in the above-entitled cause, find the defendant guilty in manner and form as charged in the indictment.

JNO. J. FALLON,
Foreman.

[Endorsed]: Title of Court and Cause. Verdict.
Filed and Entered, Mar. 20, 1908. Geo. W. Sproule,
Clerk.

*In the District Court of the United States in and for
the District of Montana.*

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

EMIL BIRCHER,
Defendant.

Motion in Arrest of Judgment.

Comes now the defendant in the above named, and moves the Court that judgment herein be arrested and the passing of sentence be stayed, and that the

indictment herein be dismissed and that defendant go hence without day, for that the said indictment does not state facts sufficient to constitute a public offense.

WALSH & NOLAN, and
G. W. MYERS,
Attorneys for Defendant.

[Endorsed]: Title of Court and Cause. Motion in Arrest of Judgment. Filed March 21st, 1908. Geo. W. Sproule, Clerk.

*In the District Court of the United States, District
of Montana.*

105th day November Term, 1907, Saturday, March
21st, 1908.

In Open Court.

No. 1253.

THE UNITED STATES OF AMERICA

vs.

EMIL BIRCHER.

Order Denying Motion in Arrest of Judgment, etc.

Defendant with his counsel and the U. S. Attorney present in Court. And thereupon defendant filed his Motion in Arrest of Judgment; and after due consideration, it is ordered that said motion be, and the same hereby is denied, to which ruling of the Court

defendant duly excepted, and exception is hereby noted.

And thereupon time for sentence waived.

Entered March 21st, 1908.

GEO. W. SPROULE,
Clerk.

Attest a true copy of minute entry.

[Seal] GEO. W. SPROULE,
Clerk.

By C. R. Garlow,
Deputy Clerk.

*In the District Court of the United States, District of
Montana.*

No. 1253.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

EMIL BIRCHER,
Defendant.

Judgment.

The United States Attorney with the defendant and his counsel present in court.

The defendant was duly informed by the Court of the nature of the charge against him, for the offense of wrongfully and unlawfully maintaining and controlling an enclosure of certain public lands of the United States, consisting of a fence of posts and wires, and comprising an area of approximately 1920 acres of such public land, committed on the 17th day

of November, A. D. 1907, in the County of Custer, in the State and District of Montana; of his indictment, arraignment and plea of not guilty; of his trial and the verdict of the jury of "Guilty" as charged in the indictment;

And the defendant was then asked if he had any legal cause to show why judgment should not be pronounced against him, to which he replied that he had none, and no sufficient cause being shown or appearing to the Court, thereupon the Court rendered its judgment as follows, to wit:

That whereas, said defendant having been duly convicted in this court of the offense of wrongfully and unlawfully maintaining and controlling an enclosure of certain public lands of the United States consisting of a fence of posts and wires, and comprising an area of approximately 1920 acres of such public land, committed on the 17th day of November, A. D. 1907, in the County of Custer, in the State and District of Montana, as charged in the indictment;

It is therefore considered, ordered and adjudged that for said offense, you, the said Emil Bircher, be confined in the Lewis and Clark County jail at Helena, Montana, for the term of twenty days, and that you pay a fine of Two Hundred and Fifty Dollars, and be confined in said county jail until said fine is paid, or you are legally discharged according to law.

Judgment rendered and entered March 21st, A. D.
1908.

[Seal]

GEO. W. SPROULE,
Clerk.

Attest a true copy of Judgment:

[Seal]

GEO. W. SPROULE,
Clerk.

By C. R. Garlow,
Deputy Clerk.

Clerk's Certificate to Judgment-Roll.

United States of America,
District of Montana,—ss.

I, George W. Sproule, Clerk of the United States District Court, for the District of Montana, do hereby certify that the foregoing papers hereto annexed constitute the Judgment-roll in the above-entitled action.

Witness my hand and the seal of said court at Helena, Montana, this 21st day of March, A. D. 1908.

[Seal]

GEO. W. SPROULE,
Clerk.

[Endorsed]: No. 1253. Title of Court and Cause.
Judgment-roll. Filed and Entered, Mar. 21, 1908.
Geo. W. Sproule, Clerk.

And thereafter, to wit, on the 26th day of March, 1908, defendant filed his Bill of Exceptions herein, which was settled and allowed and ordered filed nunc pro tunc as of March 21st, 1908, said Bill of Exceptions and Order allowing same being the words and figures following, to wit:

In the District Court of the United States for the District of Montana.

THE UNITED STATES OF AMERICA,	
	Plaintiff,
	vs.
EMIL BIRCHER,	
	Defendant.

Bill of Exceptions.

Be it remembered that heretofore, to wit, on the 18th day of March, A. D. 1908, being a day of the November Term, 1907, of said District Court, the above-entitled cause came on regularly for trial before the United States District Court for the District of Montana, the Honorable William H. Hunt, the judge thereof, presiding, Carl Rasch, Esq., United States Attorney appearing as attorney for the plaintiff, and Messrs. Walsh & Nolan, and G. W. Myers, Esq., appearing as attorneys for the defendant. A jury of twelve persons was duly and regularly empaneled to try said cause. Whereupon the following proceedings were had, to wit:

Before the introduction of any evidence in said cause, the defendant herein, by his attorneys, objected to the introduction of any evidence herein on the ground that the indictment herein did not state

facts sufficient to constitute a public offense, which said objection was by the Court overruled to which ruling of the Court defendant, by his counsel, then and there duly excepted, which said exception was then and there duly noted.

That thereupon the plaintiff introduced evidence in support of the charges contained in said indictment and evidence was by the defendant thereafter introduced in opposition thereto, and thereafter the jury returned their verdict wherein and whereby they found the defendant guilty in the manner and form charged in said indictment. That thereupon the Court fixed the time for sentence for March 21st, 1908.

Be it further remembered that, on the 21st day of March, 1908, being a day of the November Term of said Court, and the time fixed for sentence and before judgment was rendered or sentence passed in said cause, the defendant moved the Court in arrest of judgment, which said motion was in words and figures as follows:

(Title of Court and Cause as above.)

“Comes now the defendant above named and moves the Court that judgment herein be arrested and the passing of sentence be stayed, and that the indictment herein be dismissed and that the defendant go hence without day, for that the said indictment does not state facts sufficient to constitute a public offense.

WALSH & NOLAN and
G. W. MYERS,
Attorneys for Defendant.”

Which said motion was by the Court overruled and denied and the Court proceeded to render judgment and passed sentence on the defendant, to which ruling of the Court in overruling said motion in arrest of judgment and in rendering judgment and passing sentence in said cause, the defendant, by his counsel, then and there duly excepted and said exception was then and there duly noted.

And now, therefore, in furtherance of justice and that right may be done, the defendant presents the foregoing as and for his Bill of Exceptions in this cause, and prays that the same may be settled and allowed and signed and certified by the judge of the above-entitled Court who tried said cause, as provided by law.

G. W. MYERS and
WALSH & NOLAN,
Attorneys for Defendants.

*In the United States District Court for the District
of Montana.*

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

EMIL BIRCHER,
Defendant.

Order Settling and Allowing Bill of Exceptions.

This *casue* coming on regularly before the Court on this 26th day of March, 1908, being a day of the November Term, 1907, of said District Court, upon the application of the defendant for the settling and

allowance of his proposed bill of exceptions herein, heretofore duly and regularly served and presented for settlement within the time allowed by law and the rules of court, and the plaintiff, by its attorney, having waived in open court its right to propose amendments thereto, and having consented that the same may be now settled and allowed,—

It is now ordered that the foregoing Bill of Exceptions be and it is hereby settled and allowed as a true Bill of Exceptions in this cause, and the same is now hereby certified accordingly by the undersigned, the presiding judge of said court, who tried said cause, and it is ordered that the same be filed nunc pro tunc as of March 21st, 1908, and made a part of the record herein.

WILLIAM H. HUNT,
United States District Judge.

Admission of Service of Bill of Exceptions, etc.

Due personal service of within Bill of Exceptions made and admitted and receipt of copy acknowledged this 25th day of March, 1908, and it is hereby stipulated that said Bill of Exceptions is true and correct, and that the same may be signed and settled as defendant's Bill of Exceptions to the rulings in said bill referred to.

CARL RASCH,
United States Attorney and Attorney of Record for
Plaintiff.

[Endorsed]: Title of Court and Cause. Bill of Exceptions. Entered and Filed Nunc Pro Tunc as of March 21st, 1908. Geo. W. Sproule, Clerk.

And thereafter, to wit, on the 21st day of March, 1908, the defendant filed his Assignment of Errors herein, being in the words and figures following, to wit:

In the District Court of the United States, District of Montana.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EMIL BIRCHER,

Defendant.

Assignment of Errors.

Comes now Emil Bircher, the defendant in the above-entitled cause, and files the following assignment of errors upon which he will rely upon the prosecution of a writ of error to have reviewed a judgment made and entered in said cause by the above-entitled District Court, on the 21st day of March, A. D. 1908, wherein and whereby the said Court sentenced the said defendant to imprisonment in the county jail of Lewis and Clark County, Montana, for the period of twenty days, and for the payment of a fine of \$250.00, and assigns that in the records and proceedings in the above-entitled cause, there is manifest error in this, to wit:

I.

That the Court erred in holding that the indictment herein states facts sufficient to constitute a public offense.

II.

That the Court erred in overruling defendant's objection to the introduction of any evidence in said cause, on the ground that said indictment did not state facts sufficient to constitute a public offense.

III.

That the Court erred in overruling defendant's motion in arrest of judgment, on the ground that said indictment did not state facts sufficient to constitute a public offense.

IV.

That the Court erred in holding that the indictment herein sufficiently charged a violation of the act of the Congress of the United States of February 25, 1885, entitled "An Act to prevent unlawful occupancy of the Public Lands," in charging that, at the time the defendant, as alleged, was maintaining and controlling the fence and enclosure in said indictment referred to he had no claim or color of title made or acquired in good faith, with a view to entry thereof, at the proper land office under the general laws of the United States to the lands referred to in said indictment, without charging that the person, party, association or corporation making or controlling said enclosure had no claim or color of title, as aforesaid, at the time such enclosure was made.

Wherefore, the defendant prays that the judgment of said Court be reversed.

G. W. MYERS and
WALSH & NOLAN,
Attorneys for Defendants.

[Endorsed]: Title of Court and Cause. Assignment of Errors. Filed March 21st, 1908. Geo. W. Sproule, Clerk.

And thereafter, to wit, on the 21st day of March, 1908, the defendant filed his Petition for Writ of Error herein, said petition being in the words and figures following, to wit:

In the District Court of the United States, District of Montana.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EMIL BIRCHER,

Defendant.

Petition for Writ of Error.

Emil Bircher, the defendant in the above-entitled cause, feeling himself aggrieved by the judgment made and entered in said District Court in said cause on the 21st day of March, A. D. 1908, and complaining that in the record and proceedings had in said cause, and also in the rendition of said judgment, manifest error hath happened to the great damage of said defendant, comes now and petitions the above-entitled court for an order allowing said defendant to prosecute a writ of error to the United States Circuit Court of Appeals, in and for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided, and also that an order may be made fixing the amount of security which said defendant shall give and furnish upon

said writ of error, and that upon the giving of such security all further proceedings in this court shall be suspended and stayed until the determination of said writ of error by said United States Circuit Court of Appeals, and for such other and further order as to the Court may seem just.

G. W. MYERS and
WALSH & NOLAN,
Attorneys for Defendant.

Helena, Montana, March 21st, 1908.

[Endorsed]: Title of Court and Cause. Petition for Writ of Error. Filed March 21st, 1908. Geo. W. Sproule, Clerk.

And thereafter, to wit, on the 21st day of March, 1908, an Order Allowing Writ of Error was made and entered herein, said Order being in the words and figures following, to wit:

In the District Court of the United States, in and for the District of Montana.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

EMIL BIRCHER,

Defendant.

Order Allowing Writ of Error, etc.

At a stated term, to wit, the November Term, A. D. 1907, of the District Court of the United States, in and for the District of Montana, held at the city of

Helena, in the District and State of Montana, on the 21st day of March, A. D. 1908.

Present, the Honorable WILLIAM H. HUNT, District Judge.

Upon motion of Messrs. Walsh & Nolan, attorneys for defendant, and upon filing a petition for writ of error and assignment of errors, it is ordered that a writ of error be and hereby is allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit, the judgment heretofore entered herein, on the 21st day of March, A. D. 1908, and that the amount of bond on said writ of error be and hereby is fixed at fifteen hundred (\$1500.00) dollars, and that upon said defendant Emil Bircher, plaintiff in error, filing with the clerk of this court a good and sufficient bond in said sum of fifteen hundred (\$1500.00) dollars, approved by this court or its judge, execution on said judgment be stayed and all further proceedings in this court be and they hereby are suspended and stayed until the determination of said writ of error by the said United States Circuit Court of Appeals.

Dated this 21st day of March, 1908.

WILLIAM H. HUNT,

United States District Judge for the District of Montana.

[Endorsed]: Title of Court and Cause. Order Allowing Writ of Error. Filed and Entered March 21st, 1908. Geo. W. Sproule, Clerk.

And thereafter, to wit, on the 21st day of March, 1908, the defendant filed his Bond on Writ of Error herein, said Bond being in the words and figures following, to wit:

*In the District Court of the United States in and for
the District of Montana.*

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

EMIL BIRCHER,

Defendant.

Bond on Writ of Error.

Know all men by these presents, that Emil Bircher, as principal, and The United States Fidelity and Guaranty Company, a corporation, as surety, are held and firmly bound unto The United States of America, above named, in the sum of fifteen hundred (\$1500.00) dollars, to be paid to said United States of America, for the payment of which well and truly to be made the said principal and surety bind themselves, their executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Duly executed and dated this 21st day of March, A. D. 1908.

The condition of the foregoing obligation is such that whereas the above-bounden defendant, Emil Bircher, has sued out or is about to sue out a writ of error to the United States Circuit Court of Appeals

in and for the Ninth Circuit to reverse the judgment in the above-entitled cause by said District Court.

Now, therefore, the condition of the above obligation is such that if the said Emil Bircher, defendant in said cause and plaintiff in error, shall appear either in person or by attorney in the United States Circuit Court of Appeals for the Ninth Circuit on such day or days as may be appointed for the hearing of said cause, and prosecute his said writ of error to effect, and, if he fail to make his plea good, shall answer all damages and costs, and shall abide by and obey all orders made by said Circuit Court of Appeals in said cause, and shall surrender himself in execution of the judgment and sentence sought to be reviewed, as said Circuit Court of Appeals may direct, if the judgment and sentence against him shall be affirmed, then the above obligation to be void, otherwise in full force and effect.

EMIL BIRCHER.

THE UNITED STATES FIDELITY AND
GUARANTY COMPANY,

[Corporate Seal] By EDWARD C. MURRAY,
Its Attorney-in-fact.

The foregoing bond is approved as to form and sufficiency this 21st day of March, A. D. 1908.

WM. H. HUNT,
United States District Judge for the District of
Montana.

[Endorsed]: Title of Court and Cause. Bond.
Filed Mar. 21, 1908. Geo. W. Sproule, Clerk.

And thereafter, to wit, on the 21st day of March, 1908, a Writ of Error was duly issued herein, which is hereto annexed, being in the words and figures following, to wit:

In the Circuit Court of the United States, Ninth Circuit in and for the District of Montana.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EMIL BIRCHER,

Defendant.

Writ of Error (Original).

United States of America,—ss.

The President of the United States to the Honorable the District Court of the United States for the District of Montana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said District Court before you, between The United States of America, defendant in error and plaintiff in the court below, and Emil Bircher, plaintiff in error and defendant in said District Court, manifest error hath happened to the great damage of said defendant and plaintiff in error Emil Bircher, as by his petition and assignment of errors appears, we being willing that error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then

under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of *Francisco*, in the State of California, within thirty days from the date of this writ, in said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error what of right, and according to the laws and customs of the United States, should be done.

Witness, The Honorable MELVILLE W. FULLER, Chief Justice of the United States, and the seal of the Circuit Court of the United States, for the District of Montana, this 21st day of March, 1908.

[Seal]

GEO. W. SPROULE,
Clerk U. S. Circuit Court, Ninth Circuit, District of
Montana.

Due personal service of the foregoing writ of error made and admitted and receipt of copy acknowledged this 21st day of March, 1908.

CARL RASCH,

U. S. Attorney, in and for the District of Montana.

Return to Writ of Error.

The Answer of the Judge of the District Court of the United States for the District of Montana.

The record and all proceedings of the plaintiff in error, wherein mention is within made, with all things touching the same, I hereby certify, under the seal

of said court, to the United States Circuit Court of Appeals for the Ninth Circuit within mentioned, at the day and place within contained, in a certain schedule to this writ annexed, as within I am commanded.

By the Court.

[Seal]

GEO. W. SPROULE,

Clerk.

[Endorsed]: No. 1253. In U. S. Circuit Court, Ninth Circuit, District of Montana. United States of America, Plaintiff, vs. Emil Bircher, Defendant. Writ of Error. Filed March 21st, 1908. Geo. W. Sproule, Clerk. Walsh & Nolan, Helena, Mont., and G. W. Myers, Attorneys for Defendant.

And thereafter, to wit, on the 21st day of March, 1908, a Citation was duly issued herein, which is hereto annexed, being in the words and figures following, to wit:

In the District Court of the United States, District of Montana.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EMIL BIRCHER,

Defendant.

Citation on Writ of Error (Original).

United States of America,—ss.

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held in the city of San Francisco, State of California, thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the District of Montana, wherein Emil Bircher is plaintiff in error and you, the said United States of America, are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice done to the parties in that behalf.

Witness, the Honorable WILLIAM H. HUNT, United States District Judge for the District of Montana, this 21st day of March, A. D. 1908.

WM. H. HUNT,
United States District Judge for the District of Montana.

Due personal service of the foregoing citation made and admitted and receipt of copy acknowledged this 21st day of March, 1908.

CARL RASCH,
United States District Attorney and Attorney for Plaintiff.

[Endorsed]: No. 1253. In the District Court of the United States, District of Montana. United

States of America, Plaintiff, vs. Emil Bircher, Defendant. Citation. Filed March 21st, 1908. Geo. W. Sproule, Clerk. Walsh & Nolan, Helena, Mont., and G. W. Myers, Attorneys for Defendant.

Clerk's Certificate to Transcript of Record.

United States of America,
District of Montana,—ss.

I, Geo. W. Sproule, Clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing volume, consisting of 32 pages, numbered consecutively from 1 to 32, is a true and correct transcript of the pleadings, process, orders, judgment-roll, and all proceedings had in said cause, and of the whole thereof, as appears from the original records and files of said court in my possession; and I do further certify and return that I have annexed to said transcript and included within said paging the original writ of error and citation issued in said cause with admission of service thereof.

I further certify that the costs of the transcript of record amount to the sum of seventeen $25/100$ dollars (\$17.25), and have been paid by the plaintiff in error.

In witness whereof, I have hereunto set my hand and affixed the seal of said United States District

Court for the District of Montana, at Helena, Montana, this 27th day of March, A. D. 1908.

[Seal]

GEO. W. SPROULE,

Clerk.

[Endorsed]: No. 1593. United States Circuit Court of Appeals for the Ninth Circuit. Emil Bircher, Plaintiff in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court for the District of Montana.

Filed April 10, 1908.

F. D. MONCKTON,

Clerk.